

**REMARKS**

This Application has been carefully reviewed in light of the Office Action mailed April 5, 2004. At the time of the Office Action, Claims 1-20 were pending. In order to advance prosecution of this case, Applicants amend Claims 1, 4-8, 10-13, 15-18, and 20. Claims 1-20 remain pending in the application. Applicants respectfully request reconsideration and favorable action in this case.

**Section 102 Rejections**

The Office Action rejects Claims 1-20 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,061,722 issued to Lipa et al. ("*Lipa*"). Applicants respectfully traverse these rejections for the reasons stated below.

To anticipate a claim, each and every limitation must be found in a reference. Claim 1 is directed to an internet based performance measurement system, including a server operable to receive performance perception data from a customer corresponding to a performance query, and a performance engine operable to access the performance perception data. The performance engine is also operable to compare the performance perception data to a metric to determine variations between a customer perception of performance and actual performance. The portions of the cited references relied upon by the Office Action do not disclose, teach, or suggest each of these limitations.

Claim 1 has been amended (along with other claims) to substitute the word "customer" for "client." As the claims were originally drafted, it appears that the Examiner interpreted "client" to refer to a client computer rather than interpreting it to mean "customer." *Lipa* is not analogous art. It is not concerned with customer perception of performance.

The *Lipa* reference discloses assessing bandwidth for zones of servers by pinging each zone to determine relative latency of each connection. After relative latency is established, and a user is connected to a zone, the actual performance of the network connection is assessed. See *Lipa* Column 2, Lines 46-64. *Lipa* does not disclose a server operable to receive performance perception data from a customer corresponding to a performance query, or a performance engine operable to compare the performance perception data to a metric to determine variations between a customer perception of performance and

actual performance. For at least these reasons, Applicants respectfully submit that Claim 1 is not anticipated by *Lipa*, and request that the rejection of Claim 1 under *Lipa* be withdrawn.

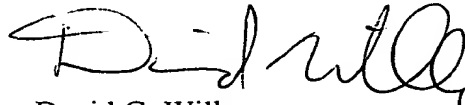
For similar reasons, Claims 8 and 15 are allowable over *Lipa*. Claims 2-7, 9-14, and 16-20 are dependent upon allowable independent claims and are allowable for the same reasons that the independent claims are allowable.

**Conclusions**

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request reconsideration and full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

No fees are believed to be due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 05-0765 of Electronic Data Systems Corporation.

Respectfully submitted,  
BAKER BOTTS L.L.P.  
Attorneys for Applicants



David G. Wille  
Reg. No. 38,363

Date: June 7, 2004

**CORRESPONDENCE ADDRESS:**

2001 Ross Avenue, Suite 600  
Dallas, Texas 75201-2980  
(214) 953-6595

Customer Number:

**35005**